**REPORTABLE**

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA NO.1021 OF 2004**

% **Date of Decision** : 15th **May, 2007.**

ASHA LATA SHARMA & ANR. .... Appellants.
Through Mr. Md. Sajid, Advocate.

VERSUS

UNION OF INDIA & ORS. .... Respondents.
Through Mr.Suresh Kait, Advocates

**CORAM:**

**HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE**
**HON'BLE MR. JUSTICE SANJIV KHANNA**

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

**SANJIV KHANNA, J:**

1. Ms. Asha Lata Sharma and Mr. Ajay Sharma are legal representatives of Mr. R.D. Sharma. The appellants have challenged

judgment dated 12th August, 2004 passed by learned Single Judge of this Court dismissing Writ Petition (Civil) No. 2899/2001 which was originally filed by Mr. R.D. Sharma.

2. The appellants herein claim right to a plot bearing no. 13/15, Tihar-I, Subhash Nagar, New Delhi measuring 103 sq. yds. The said plot was originally allotted to Mr. Parmanand in 1962. Mr. Parmanand expired on 25th November, 1985 leaving behind Ms. Daulati Bai, his wife, Ms. Kaushalaya Devi-daughter and Mr. Raj Kumar-son. Mr. R.D. Sharma has claimed that Ms. Daulati Bai and Ms.Kaushalaya Devi have executed no claim certificate for transfer of the said plot in his favour. However, Mr. Raj Kumar claims that he has inherited the said plot. There are disputes pending between Mr. R.D. Sharma, now represented by his legal representatives, and Mr. Raj Kumar. However, it is not necessary to decide the said disputes and go into these aspects for the purpose of deciding the present Appeal.

3. It appears that Mr. R.D. Sharma illegally took possession of adjoining land measuring 204 sq. yds. and sometime in 1973 constructed a building on the same. The said land belongs to Land and Development

Office (hereinafter referred to as L&DO, for short). This piece of land measuring 204 sq. yds. became the subject matter of an order passed by Sub-Judge, Tis Hazari, Delhi. It also appears that direction was issued that L&DO being the owner of the plot shall dispose of the said land. (See page 60, letter dated 20th May, 1988 written by Mr.R.D.Sharma).

4. In a subsequent letter dated 10th September, 1997, Mr. R.D. Sharma described the said 204 sq. yds of land as land bearing no. 13/15A, Tihar-I, Subhash Nagar (See page 68 of the paper book). It also appears that Mr. R.D.Sharma from 1988 had made number of requests for allotment of this plot of land but this was not accepted by the respondent-L&DO. On 21st January, 1996, Mr.R.D.Sharma was informed that he cannot be allotted this land as there was no policy for allotment of additional “strip of land to adjacent properties”.

5. On 24th April, 2001, the L&DO with the assistance of DDA demolition squad and police aid demolished the construction on 204 sq. yds of land and got it vacated.

6. Mr. R.D. Sharma after the aforesaid demolition and after the respondent-L&DO had taken possession of the plot measuring 204 sq.

yds in May, 2001, filed the above-mentioned writ petition in this Court for a direction to allot or regularise the illegal and unauthorised construction on the 204 sq.yds of land. However, he did not disclose to the Court that he has already been dispossessed and the property constructed on this 204 sq. yds. of land has been demolished.

7. The writ petition was admitted and status quo order was granted on 8th May, 2001 in favour of Mr. R.D.Sharma. However, the Petition was dismissed in default on 5th March, 2002. The Writ Petition was thereafter restored but without any interim order.

8. Mr. R.D.Sharma took the matter in appeal but the Division Bench refused to grant any stay in favour of Mr.R.D.Sharma. One of the contentions raised before the Division Bench by Mr. R.D.Sharma was that in several other cases, additional strips of land had been allotted, even though the additional strips of land had exceeded the area of original allotment. The Division Bench noticed these cases and held that in the said cases on inspection of the sites, actual area of the plot was found to be different. These cases were not cases where additional strips of land were allotted. These details have been mentioned in para 10 of

the impugned order dated 12th August, 2004 passed by the learned Single Judge. We need not go into these aspects as the said allotments have already been examined by the Division Bench in detail though while deciding the appeal for grant of interim injunction. Nothing persuades us to take a different view from the one taken by the Division Bench of this Court in order dated February 11, 2003. No new facts or circumstances have been pointed out to re-examine these aspects and hold differently.

9. Learned counsel for the appellant during the course of arguments had referred to different Circulars issued by L&DO and enclosed with the counter affidavit filed before the learned Single Judge. It was submitted that in view of the said Circulars, the appellant is entitled to allotment of 204 sq. yds of land.

10. The first Circular is dated 14th December, 1973 and states that strips of land upto 50% of the original plot can be allotted to the original plot owners by Regional Settlement Commissioner. Strips of land between 50% of the original plot area but less than 100% of the plot area can be allotted by the Chief Settlement Commissioner. Cases exceeding 100% of the plot area shall be referred to Officer on Special Duty for

examination and the Chief Settlement Commissioner. However, subsequent Circular dated 4th August, 1976 shows that approximately 342 strips of land had been identified for disposal in terms of Circular dated 14th December, 1973. This Circular states that strips of land should be self-contained pieces of land not exceeding 75 sq. yds. and not forming part of larger areas. The case of the appellant is not covered by the said Circular as the area in question exceeds 75 sq.yds.

11. It is also not the case of the appellants that the plot measuring 204 sq. yds. is included in 342 strips of land which had been identified. By a subsequent Circular dated 13th July, 1978 it was decided to allot strips of land, which had already been identified (approximately 342 in number) not exceeding 125 sq. yds., to adjacent allottees subject to certain terms and conditions mentioned therein. However, one of the conditions was that the strips of land should not form part of a larger area and each strip of land should be checked with reference to the approved Master Plan. By another Circular dated 28th January, 1980 it was further clarified that the strips of land cannot be used independently. Officers were also required to ensure that the land was not required in public interest and

the condition that the strips of land should be self-contained not exceeding 125 sq. yds. and not forming part of larger areas was reiterated.

12. It is apparent from the Circulars that Mr.R.D. Sharma could not have been allotted 204 sq. yds. of land under the said Circulars pursuant to his request made in 1988. The plot in question measures 204 sq. yds. and exceeds the prescribed maximum limit of 125 sq.yds. Further Mr. R.D.Sharma was not the original allottee of the plot. Mr. Parmanand was the original allottee of the plot no. 13/15, Tihar-1, New Delhi. Mr. R.D.Sharma was asking for allotment of additional plot of 204 sq. yds which is more in area and almost twice the size of the initial original allotment in favour of Mr.Parmanand. That apart, Mr.R.D.Sharma had approached the Court only in 2001 when his request for original allotment was rejected in 1996 vide letter dated 29th January, 1996. As rightly pointed out by the learned Single Judge, Mr. R.D.Sharma had not approached the Court with clean hands. He did not disclose material and relevant facts. Mr.R.D.Sharma had concealed that the unauthorised construction made by him on this plot was demolished by L&DO on 24th

April, 2001 and possession of the plot had been taken. Thus, it has been rightly held by the learned Single Judge that Mr.R.D.Sharma or his legal representatives are not entitled to any discretionary relief under Article 226 of the Constitution of India.

13. Learned Single Judge has also referred to the subsequent policy decisions taken by the Ministry of Urban Development in its guidelines dated 23rd May, 2000. As per the said guidelines, L&DO had decided to consider and recommend each case or a group of cases within a colony on its own merits and use. However, preference was to be given to keep the additional strips of land as green with temporary lease/licence for green development on year to year basis. L&DO was also required to examine whether the plot can be developed into a park or utilised for construction of a community centre or for public purpose. The guidelines further stipulate that if a particular strip of land can be put to independent use then disposal by way of auction or utilisation of land can be considered. As already stated above, the plot in question measures 204 sq.yds, which is almost twice the size of the original allotment of 103 sq.yds plot in favour of Mr.Parmanand. This additional strip of land is not

a strip of land attached to the original plot. It is a plot in itself.

14. In view of the above, it has to be held that the appellants herein being the legal representatives of Mr.R.D.Sharma do not have any right much less a legal right to stake a claim on the plot of land measuring 204 sq. yds. The said plot of land is owned by L&DO and will be utilised and dealt with in terms of its policy. In view of the reasoning given above, we find no merit in the present Appeal and the same is dismissed.

No costs.

**(SANJIV KHANNA)**
**JUDGE**

**(DR. MUKUNDAKAM SHARMA)**
**CHIEF JUSTICE**

**MAY 15, 2007.**
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